

**UNITED STATES PATENT AND TRADEMARK OFFICE**

Examiner:	Toan C. To	Art Unit:	3616
Re:	Application of:		David S. Breed et al.
	Serial No.:		10/058,706
	Filed:		January 28, 2002
	For:		Vehicular Occupant Characteristic Determination System and Method
	Confirmation No.:		7750
	Customer Number:		22846

**REPLY BRIEF UNDER 37 C.F.R. §41.41**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

March 15, 2007

Dear Sir:

In response to the Examiner's Answer mailed February 26, 2007, appellants, through their attorney, comment as follows:

With respect to the Examiner's comments on page 4 of the Examiner's Answer about recitations (1), (2) and (3) as recited in independent claims 1, 15, 23 and 24, it is respectfully submitted that when taking the scope of the claims as a whole, assuming the inherency of absorption of the energy signal, the '139 patent provides reasonable enablement for these recitations.

Regarding the Examiner's comments on page 5, the Examiner has not cited any authority for the proposition that the "appellant must provide evidence tending to show inherency". On the contrary, the natural occurrence of absorption of electromagnetic or ultrasonic energy by the human body is or should be well-known to those skilled in the art and this should suffice to establish inherency of these features. There is no optimization of conditions which is required to provide for absorption of electromagnetic or ultrasonic energy by a human body as it is a naturally occurring phenomenon.

As to the appellants' failure to provide extrinsic evidence to support the inherency of the claimed features, it is emphatically reiterated that it should be within the purview of those skilled in the art to appreciate that human bodies, as well as any water-containing bodies, absorb electromagnetic and ultrasonic energy to varying degrees based on, for example, the frequency of the energy waves.

Accordingly, appellants dispute the Examiner's opinion that the inherent absorption of electromagnetic and ultrasonic energy by human bodies is a probability or possibility. Rather, it is or should be a well-established fact which would certainly be known to those skilled in the art to which the invention pertains.

In view of the comments above and those set forth in the Appeal Brief filed October 24, 2006, it is respectfully requested that the Board reverse all of the final rejections.

FOR THE APPELLANTS  
Respectfully submitted,

/Brian Roffe/

Brian Roffe  
Reg. No. 35,336

Brian Roffe, Esq.  
11 Sunrise Plaza, Suite 303  
Valley Stream, New York 11580-6111  
Tel.: (516) 256-5636  
Fax: (516) 256-5638